



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of California-American Water Company (U 210 W), for an Interest Rate of 8.33% for Allowance for Funds Used During Construction (AFUDC) for its San Clemente Dam Memorandum Account and for Authorization to Place the Estimated Annual Average cost of Construction Work in Progress into Rate Base Once the Project is More Certain.

A.07-02-023

**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES AND
THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
TO STRIKE PORTIONS OF THE TESTIMONY OF THE
CALIFORNIA-AMERICAN WATER COMPANY**

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I. INTRODUCTION

The Division of Ratepayer Advocates (“DRA”) and the Monterey Peninsula Water Management District (“MPWMD”) file this motion under Rule 11.1 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, to strike portions of the testimony of California-American Water Company (“Cal-Am”), dated February 20, 2007.¹ As discussed below, the Commission should strike the testimony at issue because: 1) it is outside the scope of the Commission’s direction in Decision (“D.”) 06-11-050 and 2) it concerns the same Construction Work in Progress (“CWIP”) issue that the Commission recently decided in a previous proceeding.

¹ The testimony at issue is specifically identified in Appendix A.

II. DISCUSSION

A. Background

A major issue in D.06-11-050, the most recent general rate case for Cal-Am's Monterey District, was how to address the recovery of costs associated with the San Clemente Dam seismic retrofit. Since Cal-Am was actively considering other options to the seismic retrofit proposal, the Commission found:

[T]he San Clemente Dam retrofit project is uncertain, and ratepayers should not be required to fund estimated project costs until the Commission has fully reviewed a final project proposal, either in the next GRC or by separate application if Cal-Am is ready to proceed before its next GRC.²

The Commission directed Cal-Am to place the costs associated with the San Clemente Dam in a memorandum account to receive Allowance for Funds Used During Construction ("AFUDC") treatment with an interest rate set at the 90-day commercial paper rate.³ The Commission further directed "Cal-Am to file a separate application within 60 days *addressing the AFUDC methodology that should be applied to the San Clemente Dam retrofit memorandum account.*"⁴

On February 20, 2007, Cal-Am filed application ("A.") 07-02-023 requesting: 1) an interest rate of 8.33% for AFUDC for its San Clemente Dam Memorandum Account; and 2) authorization to place the estimated annual average cost of CWIP into rate base once the project is more certain.⁵ The application included several exhibits that contained testimony regarding the CWIP issue.⁶

² See D.06-11-050, p. 44.

³ Id., p. 45.

⁴ Id., (emphasis added).

⁵ See A.07-02-023.

⁶ Id., Exhibits A and C.

B. The Testimony Concerning CWIP Goes Beyond the Scope of the Commission's Direction in D.06-11-050.

In D.06-11-050, the Commission specifically directed Cal-Am to file a separate application to address the AFUDC methodology that should be applied to the San Clemente Dam retrofit memorandum account.⁷ However, Cal-Am has gone beyond the scope of the Commission's direction by including testimony concerning placing the estimated annual average cost of CWIP into rate base once the project is more certain.

D.06-11-050 did not - in any way - direct Cal-Am to address the CWIP issue in this application. Thus, Cal-Am's testimony should be confined exclusively to the AFUDC interest rate issue. The inclusion of testimony concerning the CWIP issue clearly goes beyond the scope of the direction of the Commission in D.06-11-050. Therefore, the Commission should strike all testimony concerning the CWIP issue in Cal-Am's application.

C. The Commission conclusively decided the CWIP issue in Decision 06-11-050.

Cal-Am has offered no justification for being allowed to *de facto* relitigate an issue that the Commission conclusively decided three months earlier. In D.06-11-050, the Commission directed Cal-Am to file a separate application addressing the AFUDC methodology that the Commission should apply to the San Clemente Dam retrofit memorandum account.⁸ As discussed above, the Commission did not direct Cal-Am to address the CWIP issue in this application.

By including testimony on the identical issue that was litigated in A.05-02-012 and decided in D.06-11-050, Cal-Am is attempting to proceed as if D.06-11-050 was never issued. If Commission-regulated utilities are permitted to flout Commission orders by filing applications that ignore earlier rulings, the Commission's authority will be seriously undermined. Put simply, D.06-11-050 already decided the issue Cal-Am is

⁷ See D.06-11-050, p. 45.

⁸ *Id.*.

attempting to relitigate with the instant filing. The decision bars Cal-Am from requesting the CWIP treatment for the costs associated with the San Clemente Dam until the next GRC or sooner if a final project proposal is available for review. Cal-Am has yet to submit a final project proposal for review and Cal-Am's next GRC filing will occur in January 2008.

Cal-Am should be required to comply with the Commission's decision regarding the CWIP issue in D.06-11-050. Therefore, DRA and MPWMD respectfully request that the Commission strike the testimony in A.07-02-023 on placing the estimated annual average cost of CWIP into rate base once the project is more certain.

III. CONCLUSION

For the reasons stated above, DRA and MPWMD respectfully request that the Commission strike the portions of Cal-Am's testimony specifically identified in Appendix A.

Respectfully Submitted,

/s/ **MARCELO POIRIER**

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APPENDIX A

(Specific Testimony DRA and MPWMD Seek to Strike)

Testimony	Testimony Reference	Subject Matter
Exhibit A – Direct Testimony of Dave P. Stephenson	Section II: 3:28-4:4; Section III: 5:8-5:10; 5:21-6:12; Section IV: All; Section VI: All; Attachment 2: All	CWIP
Exhibit C – Direct Testimony of Dr. Carl Danner	Introduction: 2:8-2:10; Section I: 9:7-9:10; Section II: All; Section III: 14:8-14:11; 15:27-17:10; 17:22-18:3; Section IV: 18:5-19:9.	CWIP
Exhibit D – Proposed Notice of Application for Publication	Paragraph 5	CWIP

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document
“**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES AND THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT TO STRIKE
PORTIONS OF THE TESTIMONY OF THE CALIFORNIA-AMERICAN
WATER COMPANY**” in **A.07-02-023**.

A copy was served as follows:

[X] **BY E-MAIL**: I sent a true copy via e-mail to all known parties of record
who have provided e-mail addresses.

[] **BY MAIL**: I sent a true copy via first-class mail to all known parties of record.

Executed in San Francisco, California, on the **16th** day of **April, 2007**.

/s/ REBECCA ROJO

Rebecca Rojo

N O T I C E

Parties should notify the Process Office, Public Utilities
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Francisco, California 94102, of any change of address and/or
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